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January 27, 1993

BY HAND

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Implementation of the Cable Television Consumer Protection and Competition Act of 1992 -- MM Docket No. 92-266

Dear Ms. Searcy:

Please find enclosed on behalf of the Municipal Franchising Authorities, an original and nine (9) copies of Comments on Implementation of the Cable Act of 1992, Ratemaking and Regulation.

Any questions regarding the submission should be referred to the undersigned.

Sincerely,

Janice L. Lower
Michael R. Postar

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of Sections of of the Cable Television Consumer Competition Act of 1992	)	MM Docket No. 92-266
Rate Regulation	)	

TO: THE COMMISSION

COMMENTS OF THE
MUNICIPAL FRANCHISING AUTHORITIES

The City of Dover, DE; Town of Middletown, DE; City of Milford, DE; City of New Castle, DE; City of Seaford, DE; City of Anderson, IN; City of Auburn, IN; Town of Avilla, IN; City of Columbia City, IN; Town of Bremen, IN; City of Mishawaka, IN; Town of Pendleton, IN; Town of Winamac, IN; City of South Haven, MI; Village of Andover, NY; Village of Brockton, NY; City of Frankfort, NY; Village of Hamilton, NY; Lake Placid Village, NY; Village of Little Valley, NY; Town of Massena, NY; Village of Mayville, NY; Village of Spencerport, NY; Village of Watkins Glen, NY; Village of Wellsville, NY; City of High Point, NC; City of Bolivar, TN; City of Floydada, TX; City of Lubbock, TX; City of Tulia, TX; City of Azusa, CA; City of Banning, CA; City of Inglewood, CA; City of Monterey Park, CA; City of Redding, CA; City of San Diego, CA; collectively, the Municipal Franchising Authorities ("MFA"), hereby submit their comments on the proposed rulemaking on rate regulation for cable operators.

I. INTRODUCTION

The members of the MFA are all municipalities located in Delaware, California, Indiana, Michigan, New York, North Carolina, Tennessee, and Texas, which have each issued franchises to cable operators to provide service in their municipal franchise territories. The MFA's members are municipalities granted significant ratemaking responsibilities under the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992"). They will regulate rates for basic tier service and equipment rental and will work with the FCC to ensure that rates for other services are reasonable. The MFA has the following comments on the rate regulation issues raised by the Federal Communications Commission ("FCC" or "Commission") in its Notice of Proposed Rulemaking ("NPRM") adopted on December 10, 1992, and released on December 24, 1992, in this docket.

II. DISCUSSION

A. Provisions of the Cable Act of 1992

Section 3, Regulation of Rates, of the Cable Act of 1992 amends Sections 612, 622(c) and 623 of the Communications Act of 1934. Section 3 provides for the certification of franchising authorities to regulate cable rates for basic tier service, the adoption of rate standards for cable services and equipment rental, the adoption of procedures for rate determinations including complaints by franchising authorities filed at the FCC, and the enforcement power of the franchising authorities.

B. Issues

1. Did Congress intend for the FCC to adopt rules to enable franchising authorities to reduce unreasonable rates for cable service?[1/]

Yes. The Cable Act of 1992 was enacted over a Presidential veto on the basis of a grass-roots public outcry over increases in cable rates.[2/] Congressional hearings on the cable bills revealed real constituent anger over cable prices and service quality.[3/] A GAO study confirmed the public's suspicions: those responding to the survey reported a 29% jump over a two-year period in the cost of the cheapest basic cable service.[4/] To further illustrate this concern, consider the rates for cable service in Monterey Park, CA which have increased 59% in just four years. The House Report on the Act acknowledged that some cable operators have unreasonably raised rates.[5/]

In spite of the Cable Act of 1992, cable rates continue to climb. Watkins Glen, NY reports that its rates were increased as of January 1, 1993. In Tulia, TX, the rates for basic service will increase by about 13.9% on March 1, 1993. Middletown, DE

1/ NPRM at 4-5, ¶ 4.

2/ Most of the members of the MFA generally believe that the monthly cable charge in their community is unfair and unreasonable. They believe that the FCC ought to adopt rules that would allow the franchising authority or the FCC to reduce the present charges for the basic service tier.

3/ 138 Cong. Rec. S414 (daily ed., Jan. 27, 1992) (statement of Sen. Danforth).

4/ S. Rep. No. 92, 102nd Cong., 1st Sess. ("Senate Report"), at 5.

5/ H.R. No. 628, 102nd Cong., 2nd Sess. ("House Report"), at 79.

also reports frequent rate increases. The members of the MFA report charges of from $11.90 to $27.75 for basic cable service.

The Cable Act of 1992 reflects its roots as a response to public frustration with escalating cable bills. Section 623(b)(1) charges the FCC with ensuring that rates for the basic service tier are reasonable. It is important to note that the Cable Act of 1992 does not specify any minimum or maximum allowable rate; rather, it lists factors that the FCC is to take into account in arriving at a determination of what is a reasonable rate.

Congress clearly intended for the FCC and franchising authorities to reduce cable rates that are unreasonable. In Milford, DE, Pendleton, IN, Bolivar, TN, Mayville, NY, and many other cities and towns in the MFA, there is the common concern that cable rates are simply too high. The MFA urges the FCC to adopt rules that are responsive to this concern.

For the first 180 days following the FCC's promulgation of rules, a franchising authority may file a complaint with the FCC concerning existing cable rates. The FCC will examine the cable operator's rates that are subject to the franchising authority's complaint regardless of whether the cable operator sought a rate increase.[6/] Congress intended for the FCC's initial examination of rates complained of by franchising authorities to include current rates. To permit effective review of these rates, High Point, NC, like other members of the MFA, seeks reasonable cost guidelines from the FCC. These will enable

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6/ 47 U.S.C. § 623(c)(3).

the FCC to lower rates, and order refunds in appropriate cases, to reduce unreasonable cable charges.

2. Does the FCC have regulatory jurisdiction over basic cable service only if authority to regulate by a franchising authority is disallowed or revoked?[7]

No. The Commission tentatively interprets Section 623 of the Communications Act, as amended by the Cable Act of 1992, to substantially limit the FCC's authority directly to regulate basic tier rates.[8] The MFA agrees that the specific language of the Act seems to allow the FCC to undertake a franchising authority's jurisdiction only when the FCC has disallowed that particular city's or town's authority to regulate by denying its request for certification, or by revoking certification after finding that the franchising authority cannot fulfill the requirements for regulation as set forth in the Act. Such a result would create a regulatory gap, leaving those franchising authorities which do not choose to seek certification with no regulatory structure whatever. It does not appear reasonable that Congress intended that, in order to have regulation at all, even though it does not wish to or cannot regulate itself, a franchising authority must seek to be certified with the sole intent of being denied or rejected on substantive grounds. Forcing a municipality into such a sham, which would waste resources in an empty gesture, makes no sense.

Therefore, the MFA supports the alternative interpretation suggested in the proposed rulemaking (at ¶ 16)

7/ NPRM at 11, ¶ 15.

8/ NPRM at 11, ¶ 15.

that the FCC's broad mandate in Section 623(b) to ensure that basic service tier rates are reasonable, also provides authority for the Commission itself to regulate rates--after complaint from the franchising authority or through affirmative requirement that there be notice from the operator and regulatory approval prior to a rate increase--where a franchising authority does not choose to, or cannot, regulate.

In this case, however, in order for the FCC to be on notice that its authority to regulate will be called upon, it should allow a franchising authority to file a statement explaining why it cannot seek certification.[9/] If a franchising authority that cannot, or will not, regulate its cable operator files such a request, the cable operator will be put on notice that regulatory jurisdiction will not falter, but will be taken up by the FCC, and that the cable operator must direct any rate requests to the FCC, rather than to the franchising authority.

This approach is consistent with the jurisdictional framework of the Cable Act of 1992 in that Congress' main intent was to establish a regulatory framework for the cable industry, and in that it intended to provide that opportunity to the most interested entity--the franchising authority.[10/] But regulation was such a paramount concern for Congress that to leave a regulatory gap where the "first choice" regulator, the franchising authority, cannot regulate, when another appropriate

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9/ See NPRM at 12, n.32.

10/ H.R. Conf. Rep. No. 862, 102nd Cong., 2nd Sess. ("Conference Report"), at 58.

structure (FCC jurisdiction) is available, makes no sense. The jurisdiction given to the FCC under the Act where certification is denied or revoked is sufficient to provide for instances when certification is not sought. Any other interpretation strains the intent of Congress in this legislation.

3. Is the authority to regulate rates derived from federal or state authority?[11/]

The Cable Act of 1992 provides new federal authority to regulate rates. Franchising authorities are granted the power to regulate cable rates under Section 623(a)(2)(A). Section 623(a)(4) requires the FCC to approve a franchising authority's application for regulatory authority that meets the minimum requirements of that section.[12/]

This conclusion is supported by the legislative history of the Cable Act of 1992: as the FCC noted in the NPRM, the House Committee "intended that, as a matter of law, except as provided in Subsection 3(j) all franchising authorities, regardless of the provision in a franchise agreement, shall have the right to regulate basic cable service rates if they meet the conditions in section 623(a)(4)."[13/]

11/ NPRM at 14-15, ¶ 20.

12/ See also, 47 U.S.C. § 623(1), stating that "No Federal agency or State may regulate the rates for the provision of cable service except to the extent provided under this section.... Any franchising authority may regulate the rates for the provision of cable service, but only to the extent provided under this section."

13/ House Report at 81.

4. What is the franchising authority's power to set rates for basic tier service?[14/]

The MFA believes that the Cable Act of 1992 gives the franchising authority the right: (1) to approve or reject rates for the basic tier cable service, (2) to order rates that conform to the FCC's rate making regulations when the franchising authority rejects the rates requested by the cable operator, and (3) on its own motion, to initiate an investigation of rates for the basic service tier and to order rates that conform with the FCC's regulations.

The power to set the correct rate is incident to the power to determine the reasonableness of rates. This allows the cable operator to avoid further delay in implementing new cable rates, which would occur if it had to go through the formality of filing a new request for rates that merely conformed to the franchising authority's ruling. To accomplish this, the FCC's regulations should provide procedures which allow rate investigations initiated by the franchising authority to determine the reasonableness of the charges for the basic tier service.

5. Should the FCC allow cable operators with rates below the "benchmark" to raise rates to the "benchmark" level?[15/]

In the Introduction and in numerous other sections of the NPRM, the FCC tentatively concludes that it would not be appropriate to select cost-of-service regulation as the "primary" mode of regulation for cable service rates. The Commission then

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14/ NPRM at 44-45, ¶ 86.

15/ NPRM at 23-24, ¶ 34.

puts forth several alternative "benchmarks" or methods that could be used to derive a benchmark that could be used to set a reasonable rate. If such a benchmark method is ultimately selected, rates above the benchmark would be presumed to be unreasonable. If a cable operator's charges were at or below the preset benchmark rate, the charge would be presumed to be reasonable. The Commission states that "relying on a benchmark alone to define a reasonable rate would allow those systems with rates below the benchmark to raise rates to the benchmark level." NPRM at 23, ¶ 34.

The MFA strongly opposes the FCC's proposal to permit cable operators with "rates below the benchmark to raise rates to the benchmark level."[16/] This use of benchmark rates is anathema to the entire legislation and should be rejected. Redding, CA; Anderson, IN; Lake Placid, NY; New Castle, DE; Seaford, DE; and virtually every MFA member oppose the FCC's proposal to use the benchmark to raise cable rates. The costs of the systems used to develop the benchmark may be inflated or may not be reflective of the costs in a particular municipality. For these reasons, Spencerport, NY; South Haven, MI; Bremen, IN; Winamac, IN; Little Valley, NY; Andover, NY; and virtually all of the MFA oppose basing cable costs in their communities on anything other than their own costs.

A primary concern of Congress was excessive cable rates.[17/] For the FCC to propose rules that will allow existing

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16/ NPRM at 23, ¶ 34.

17/ Conference Report at 55.

rates to increase either immediately or over time is not supportable under the Cable Act of 1992. This proposed use of benchmark rates provides a powerful argument for the rejection of this method of rate making.

Another problem with the proposed use of benchmark rates is that there is absolutely no proposed provision for the opposite situation. That is, a lower-cost-than-benchmark cable operator would be able to reap monopoly profits since apparently there would be no opportunity for regulators to apply cost-of-service principles to that system. Thus, the proposed rulemaking is unfairly skewed in the direction of rates that would be higher than reasonable cost-based rates. Equity requires that if high cost operators can earn reasonable profits by collecting higher than benchmark rates, low cost operators should be held to the same standard of reasonable profits and, therefore, rates should be set at lower than the benchmark rate.

The Commission's proposal to adopt a price cap mechanism, which would restrict the annual increases required to raise rates to the benchmark level, gives little solace to ratepayers that could be facing increased rates.

6. Should one of the ratemaking benchmarks be "effective competition"?[18/]

No. The FCC proposes to adopt one of the benchmarking alternatives as the primary mode of rate regulation and allow high cost operators to seek relief from the benchmark level. The first alternative benchmark is "rates charged by systems facing

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18/ NPRM at 26-27, ¶ 41.

effective competition." (Paragraph 41) The NPRM itself states that so few cable systems currently face effective competition that a random sample of all systems may not yield reliable results for those systems (Paragraph 139). Obviously, a small number of systems cannot possibly be used as a benchmark for the rest of the industry.

The average rate currently charged by systems facing effective competition is from too small a portion of the universe to be meaningful. This does not even address whether these systems are truly competitive with one another or, even if they are, whether their costs are reflective of other systems; urban vs. rural, high density vs. low density, new equipment vs. older equipment, etc. If there were a sufficiently large sample of systems facing effective competition as defined by the Act, we could perhaps ignore the possibility that some of these systems do not face such competition as a result of any number of potential behaviors of the owners of these systems. Since we do not have such a sample, it is quite clear that, even though the Act may specify the rates of these systems as a guideline, at this time the usefulness of that average is extremely limited for the vast majority of the cable industry.

7. What is the proper definition of "effective competition"?[19/]

The regulatory provisions of the Cable Act of 1992 are largely aimed at cable operators that abuse their market power

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19/ NPRM at 6-8, ¶ 9.

and unreasonably raise the rates they charge subscribers.[20/] Municipal and federal regulation of cable rates is limited to cable operators that are not subject to effective competition.[21/]

The Cable Act of 1992 sets forth three tests[22/] for determining if effective competition exists. The FCC's proposal to measure competition in the franchise area by cumulatively counting homes served by smaller competing operators is flawed and should be abandoned. The FCC's proposal to cease regulation if it finds that the total number of households subscribing to cable services, other than the largest cable operator, exceeds 15% of the households in the franchise area, sets an extremely low threshold for effective competition and potentially limits the regulation of cable rates where the need for regulation exists. There is ample evidence that Congress was concerned about the market share of competing cable systems.[23/] In the context of creating an environment of effective competition, Congress was concerned that viable competitors exist in cable services.[24/] Aggregating the subscribers of the lesser cable

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20/ House Report at 33.

21/ House Report at 34.

22/ Section 623(l)(1).

23/ The DOJ's report to the Senate Communications Subcommittee analyzed the market power of cable providers. Based on that report, the subcommittee concluded that cable providers do exercise market power, that some further video competition is needed to constrain cable's market power, and that there are benefits to competition between two cable systems. Senate Report at 11-14.

24/ "The position we have taken in the legislation is that what constitutes effective competition is another multi-channel

(continued...)

operators fails to provide a meaningful measure of the viability of competition. The Commission ought to examine each operator individually to determine if that operator can compete with the largest cable operator in a market.

Congress has arrived at the 15% penetration figure as a measure of market share below which effective competition does not occur. Just as the mere possibility of cable service was not deemed sufficient to relinquish rate regulation, the absence of a single competitor with a 15% market share should necessitate rate regulation.

8. Should the local franchising authority be required to demonstrate that the cable operator is not subject to "effective competition"?[25/]

No. The Cable Act of 1992 is a consumer protection measure. It should be interpreted to protect all subscribers and to minimize procedural hurdles to both the franchising authority and the FCC.[26/] To this end, franchising authorities may regulate rates and customer services and may file complaints with the FCC concerning unreasonable rates. Placing the burden of demonstrating effective competition on the franchising authority is inconsistent with the spirit of the Act. Since the cable operator has better access to information about the extent of

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24/(...continued)
provider." 138 Cong. Rec., S411-412 (daily ed. Jan. 27, 1992) (statement of Sen. Danforth).

25/ NPRM at 12-13, ¶ 17.

26/ The conference report stated that it was the intention of the conferees "to allow consumers to simplify the process of filing complaints concerning unreasonable rates...." Conference Report at 64.

competition it faces, it makes more sense to place this burden on the cable operator. The franchising authority should be certified to regulate cable rates unless a cable operator provides sufficient documentation to the FCC. The FCC should adopt procedures that will allow it to make this determination.

9. Is "average rate" another potential benchmark?[27/]

The Commission proposes basing a benchmark on the data from all cable systems operating in 1992. The FCC would calculate this benchmark on the "average per-channel rate for their lowest service tier." The Commission does acknowledge that, without adjustment, this benchmark could incorporate existing monopoly profits. There appears to be a sentiment that for some short interim period such a rate could be useful because of its simplicity. The MFA disagrees. Under no circumstances should any benchmark be established that could possibly include a monopoly profit.

10. Should there be a cost-of-service benchmark?[28/]

In general, the MFA believes that their cable rates should be based on their individual cable operator's costs of service. While the MFA supports a simplified approach to rate making, it recommends an approach based upon the costs incurred by the local cable operator. If the FCC determines that a benchmark approach is warranted, it should be a cost-based approach and should allow the franchising authority the discretion to set rates for the basic service tier based upon the

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27/ NPRM at 28-29, ¶ 46.

28/ NPRM at 29, ¶ 48.

operator's costs. To avoid "lost" costs, and to discourage the migration of cable services from the basic tier to other tiers, the FCC should also have the option of setting rates for service based upon the costs of the cable operator.

11. Should "direct cost of signals plus nominal contribution to joint and common costs" be used to set rates?[29/]

The MFA believes that this is a better alternative than the benchmark alternatives. The drawback is, of course, the potential costs of the regulation itself. Even without having knowledge of the internal accounting of cable operators, the MFA would presume that the necessary data is either readily available already or easily obtainable if required.

12. Should a cost-of-service analysis be considered?[30/]

Yes. The MFA disagrees that cost-of-service regulation gives "little incentive to be efficient." However, cost-of-service regulation typically requires a level of expertise far beyond the wherewithal of the local governments that will almost always be the primary regulator. Some simplifying assumptions are required. Cost-of-service as a concept should be available to the operators, the regulators, and the subscribers to challenge rates that are demonstrably too high or too low. Even if the FCC adopts a benchmark approach, it should do so only on a transitional basis. It should move to a cost-of-service basis within a short (12-24 month) period. Since the FCC would apparently allow a high cost cable operator to resort to cost-

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29/ NPRM ¶ 53-56.

30/ NPRM ¶ 57-61.

of-service regulation on an individual system basis in an effort to prove that its rates, while above the benchmark, are not unreasonable, franchising authorities and the FCC should also be able to use actual costs to reduce rates in appropriate cases.

13. Comments on Appendices A and B

(1) Cash working capital as measured by the accounting definition of current assets less current liabilities is not an appropriate measure of the working capital requirement that is includable in a regulated rate base.

(2) Under no circumstances is it appropriate to include any goodwill in a regulated rate base. Congress has prohibited such treatment for holding companies. One of the primary reasons for passing the original Public Utility Holding Company Act ("PUHCA") was to prohibit the write up of assets that utilities "sold" from one entity to another, thereby inflating "investment" without creating any increase in value to the customers. There is no reliable standard upon which to base a conclusion that goodwill represents the capitalization of efficiencies that the purchaser may be able to realize that the seller could not. To the extent that goodwill is currently on the books of a cable operator it is most certainly there because the current owner saw an opportunity to earn monopoly profits and was willing to pay a premium price for the system.

(3) The used and useful standard is the appropriate standard to use in measuring a cable operator's rate base. As the Commission notes "[t]he costs the regulated company may include in rate base have traditionally been determined by

applying the used and useful standard to the original construction cost of the assets dedicated to service." (Appendix B, Paragraph 2) This standard also bars goodwill. Items such as Construction Work in Progress ("CWIP") are best left out of rate base (accumulation of AFUDC should be allowed) unless a financial emergency dictates a current return on the investment that is not yet used and useful.

(4) No amortization should be allowed in rates for goodwill whether that goodwill is included in rate base or excluded from rate base. If it is allowed, however, the amortization period should be 40 years.

14. Should the FCC's approval of the franchising authority's certification application be based solely on the information contained in the application?[31]

Yes. The FCC should require sufficient information in the franchising authorities' certification application to permit the Commission to make a certification determination. To go beyond that process would be to create an administrative nightmare. For example, should the FCC choose to seek comments on an application, it might be deluged with comments from the cable subscribers in favor of, and the operator against, local regulation. An opportunity for reply comments might be necessary. Also, if additional information were to be required, what would be deemed "sufficient"? Would the size of the franchising authority be taken into account with regard to the amount or sufficiency of additional evidence as to its ability to regulate? How could the FCC develop a uniform standard that

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31/ NPRM at 16, ¶ 23.

would not be subject to challenge? It would appear to the MFA that a straightforward standard using information sought in the certification application (with an application form designed to capture the requisite information) should be established by the Commission.

15. Should franchising authorities be permitted to file a joint request for certification to regulate?[32/]

Certainly, where there is a logical basis for doing so. In particular, where the franchising authorities would regulate the same operator, and especially where they are joint franchisors, as is the case in Brockton, NY, such a joint request would make complete sense. Also, where two franchising authorities would be able and willing to regulate the same operator together where neither might be willing to regulate alone, such an approach should be considered. Since the FCC must approve each certification request individually, the Commission would be able to ensure that there would be a workable mechanism for joint regulation, and that there would be no conflicts between the two--and that they each had the legal authority, as well as the personnel and the resources, to undertake such a joint venture. The Commission could limit its approval of joint certification to those that fulfilled the FCC's certification requirements.

32/ NPRM at 15, ¶ 21.

16. Should rates for equipment be regulated separately from rates for the basic service tier?[33/]

Yes. The Act provides (Section 623(b)(3)) that the standards for prices or rates for equipment shall be based on actual cost. Since the Commission is considering various ratemaking formulas for basic tier rates, including methodologies that are not based on the cost-of-service, the MFA believes that the FCC should adopt separate standards for equipment rates and service rates. Also, the MFA believes equipment rates should be reviewable by franchising authorities either in conjunction with or separately from basic tier rates, if necessary, in terms of the timing of any proposed rate increase or change in customer service standards that may involve equipment only.

17. Is thirty days sufficient for a municipality to review a request for new rates?[34/]

Absolutely not. Municipal governments have a myriad of other responsibilities and concerns facing them in addition to a new responsibility for regulating cable rates. Thirty days in which to distribute, analyze, provide opportunity for all interested parties to be heard, obtain any additional information necessary, consider and render a decision on a rate increase request is an impossibility. Indeed, just the notice period for open hearings (should the municipality choose to, or be required to hold them) or official municipal final action may be twenty to thirty days. A more appropriate time frame would be ninety or one hundred twenty days. This would not prejudice the cable

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33/ NPRM at 35, ¶ 63.

34/ NPRM at 43, ¶ 81-83.

operator, which would time its rate increase request to take into account the point at which it needs the increase, and file ahead of that time accordingly.

18. Should the franchising authority regulate late charges for the basic tier service?

Yes. The MFA recommends that the FCC authorize the franchising authority to determine the proper late charge and/or late payment associated with the basic service tier. Columbia City, IN, like other MFA members, seeks authority over all aspects of basic service, including late charges, which are one element of the total charge for the basic service tier. Presently, there is great diversity among the way cable operators charge for late payments. Late charges can be a significant portion of the total charge for the basic service tier. The FCC's regulations should specify the charge or formula that cable operators may impose for late payment of the charge for the basic service tier.

The MFA believes that the charge for late payment should reflect the actual cost to the cable operator. The cost of late payment should reflect two components: the cost of capital and the processing cost.

The franchising authority is best able to determine the actual costs of the local cable operator. The MFA also recommends that the FCC adopt regulations governing late charges for cable operators that become subject to FCC rate regulation.

19. Should cable subscribers receive itemized bills for services, equipment rental, state and local fees and taxes?[35]

Yes. The MFA recommends that the FCC adopt comprehensive regulations governing cable bills. The regulations should require that the cable bill separately state charges for the basic service tier. The charges for each service beyond the basic service tier should also be itemized. Similarly, equipment rental charges, fees and taxes -- for the total bill -- should be stated separately. That is not presently the case in Hamilton, NY and Avilla, IN, and for certain other MFA members as well.

Congress passed the Cable Act of 1992 to protect cable subscribers. One of the best means of addressing this concern of Congress is to improve the quality of information that the cable industry makes available to subscribers concerning the costs of cable service. In general, the amount and quality of information that subscribers receive on their monthly bills is below that provided in competitive markets. Floydada, TX, like other municipalities, required new authority to require itemized cable bills.

Cable operators typically provide only general descriptions of the services rendered, do not always itemize equipment rental charges and sometimes do not even break down the various services for which the subscriber is charged.

Congress enacted an expansive consumer protection law that the FCC should implement with due regard to that purpose. The words of the Cable Act of 1992 should not be read narrowly to

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35/ NPRM at 46-46, ¶ 89; NPRM at 78-79, ¶¶ 174-175.

defeat necessary consumer protection rules and regulations. This is particularly true with regard to the contents of subscriber bills.

> Section 623(b)(5)(D) requires the FCC to
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> prescribe standards and procedures to assure that subscribers receive notice of the availability of the basic service tier....

This section demonstrates the intent of Congress to ensure that subscribers receive timely and useful information concerning their right to purchase the basic service tier. Congress did not limit the notice requirement to the time when service is initially requested or even once each year. The FCC is obligated to ensure that subscribers routinely receive full notice of the availability of the basic tier service.

The FCC's initial proposals are wholely inadequate to improve the information readily available to cable subscribers. The FCC proposed an initial notice within 90 days or three billing cycles from the effective date of the new rules governing cable rates and notice in any sales information. NPRM at 45-46, ¶ 89. The MFA believes the initial notice should be provided sooner and support the second proposal.

The FCC's proposal, however, misses the mark. With the plethora of inserts in the monthly cable bills, a "notice" often will be lost in the recycle bin, depriving many subscribers of the information that Congress sought to make available. And who can blame them?[36/] The MFA believes that only way to inform all

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36/ 138 Cong. Rec., S567 (daily ed., Jan. 27, 1992) (statement of Sen. Gorton).

subscribers of the availability of the basic service tier is directly on the monthly cable bill.[37/]

The MFA believes that the monthly cable bill must contain the following information to be useful to subscribers and to accomplish the purposes of the Cable Act of 1992:

(1) separate itemization and description of the basic service tier and the associated charge for the billing period,

(2) separate itemization of each additional service selected by the subscriber and the associated charge for the billing period,

(3) separate itemization of each equipment rental and the associated charge for the billing period,

(4) separate or combined itemization of fees and charges identified in Section 14 of the Cable Act of 1992, and

(5) a statement that "Cable subscribers may purchase only the Basic Service Tier."

The FCC must ensure that cable subscribers receive useful and timely information about cable services and charges. The MFA believes that the format of the cable bill is an integral part of that effort. The failure to recognize the importance of the monthly cable bill as the best way of informing subscribers of the cost and availability of the basic service tier will result in a proposal that fails to implement the intent of Congress. Regulations that fail to inform subscribers of the

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37/ 138 Cong. Rec., S661. (daily ed., Jan. 30, 1992) (statement of Sen. Metzenbaum).

other services available similarly will fail to provide subscribers with the type of information necessary to make an informed decision about the basic service tier.

20. Should the franchising authority be permitted to recover its cost of regulating under the Cable Act of 1992 from the cable operator?

The MFA believes that the standards, guidelines and procedures concerning the implementation and enforcement of the rate regulations should include the recovery of the franchising authority's cost of such regulation from the cable operator. Section 623(b)(5). Although some MFA members already have the authority to recover the cost of regulating cable directly from the cable operator, the cost of regulation should not be ignored by the FCC. For example, while Inglewood, CA currently collects a franchise fee from the cable operator, in general, the local authority's ability to recover the cost of implementing the Cable Act of 1992 is less clear. Banning, CA and most members of the MFA urge the FCC to act to allow them to recover such costs directly from the cable operator. To ensure the maximum participation by franchising authorities, the FCC should address this issue. The absence of such treatment could cause the FCC to become the regulatory body for a significant number of cable operators. It would be more efficient for the standards, guidelines and procedures concerning the implementation and enforcement of the rate regulations to authorize all municipalities to recover the cost of cable regulation directly form the cable operators under the authority of the Cable Act of 1992.